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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2006-64745

NICOLE D. DUPONT, PT

ACCUSATION

10680 Horton Street
Penn Valley, CA 95946

License No. PT 16557

Respondent.

Complainant alleges:

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer for the Physical Therapy Board of California.

I.

LICENSE HISTORY

2. On or about March 25, 1990, the Physical Therapy Board of California issued license No. PT 16557 to Nicole D. Dupont (Respondent). The license will expire on July 31, 2009, unless renewed.

3. This Accusation is brought before the Physical Therapy Board of California under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 II.

2 RELEVANT STATUTES

3 4. Physical Therapy is governed under the Physical Therapy Practice Act
4 (Bus. & Prof. Code § 2600 *et. seq.*). Additionally, the laws under the Medical Practice Act (Bus.
5 & Prof. Code § 2000 *et. seq.*) also apply to physical therapists under Business and Professions
6 Code section 2660(i). Business and Professions Code section 2602.1 provides as follows:

7 **§ 2602.1 Priority to protect the public**

8 Protection of the public shall be the highest priority for the
9 Physical Therapy Board of California in exercising its licensing,
10 regulatory, and disciplinary functions. Whenever the protection of
the public is inconsistent with other interests sought to be
promoted, the protection of the public shall be paramount.

11 5. Physical Therapy is defined under Business and Professions Code section
12 2620 as follows:

13 **§ 2620. Physical therapy defined and restricted**

14 (a) Physical therapy means the art and science of physical or
15 corrective rehabilitation or of physical or corrective treatment of
any bodily or mental condition of any person by the use of the
16 physical, chemical, and other properties of heat, light, water,
electricity, sound, massage, and active, passive, and resistive
17 exercise, and shall include physical therapy evaluation, treatment
planning, instruction and consultative services. The practice of
18 physical therapy includes the promotion and maintenance of
physical fitness to enhance the bodily movement related health and
19 wellness of individuals through the use of physical therapy
interventions. The use of roentgen rays and radioactive materials,
20 for diagnostic and therapeutic purposes, and the use of electricity
for surgical purposes, including cauterization, are not authorized
21 under the term "physical therapy" as used in this chapter, and a
license issued pursuant to this chapter does not authorize the
22 diagnosis of disease.

23 (b) Nothing in this section shall be construed to restrict or prohibit
other healing arts practitioners licensed or registered under this
24 division from practice within the scope of their license or
registration.

1 6. Business and Professions Code section 2660 provides, in pertinent part,
2 the following:

3 **§ 2660. Suspension, revocation or imposition of conditions**
4 **upon any license, certificate or approval; grounds**

5 The board may, after the conduct of appropriate proceedings under
6 the Administrative Practice Act, suspend for not more than 12
7 months, or revoke, or impose probationary conditions upon any
8 license, certificate, or approval issued under this chapter for
9 unprofessional conduct that includes, but is not limited to, one or
10 any combination of the following causes:

11 ...

12 (d) Conviction of a crime which substantially relates to the
13 qualifications, functions, or duties of a physical therapist or
14 physical therapy assistant. The record of conviction or a certified
15 copy thereof shall be conclusive evidence of that conviction.

16 ...

17 (f) Habitual intemperance.

18 ...

19 (h) Gross negligence in his or her practice as a physical therapist
20 or physical therapy assistant.

21 (i) Conviction of a violation of any of the provisions of this
22 chapter or of the State Medical Practice Act, or violating, or
23 attempting to violate, directly or indirectly, or assisting in or
24 abetting the violating of, or conspiring to violate any provision or
25 term of this chapter or of the State Medical Practice Act.¹

26 ...

27 (l) The commission of any fraudulent, dishonest, or corrupt act
28 which is substantially related to the qualifications, functions, or
 duties of a physical therapist or physical therapy assistant.

 ...

1. The Medical Practice Act, is found at Chapter 5 of Division 2 of the Business and Professions Code, Section 2000 *et. seq.*

7. Business and Professions Code section 2661 provides as follows:

§ 2661. Conviction defined; time of action by committee

A plea or verdict or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

8. Business and Professions Code section 2661.5 provides for cost recovery for investigation and prosecution of the case. More specifically Business and Professions Code section 2661.5 states as follows:

§ 2661.5. Assessment and payment of costs in disciplinary proceedings; licensee found guilty of unprofessional conduct; enforcement of order; denial of renewal or reimbursement; deposits

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of the assessed costs specified in the proposed decision.

(c) When the payment directed in an order for payment of costs is not made by the licensee, the board may enforce the order of payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) (1) Except as provided in paragraph (2), the board shall not

1 renew or reinstate the license or approval of any person who has
2 failed to pay all of the costs ordered under this section.

3 (2) Notwithstanding paragraph (1), the board may, in its
4 discretion, conditionally renew or reinstate for a maximum of one
5 year the license or approval of any person who demonstrates
6 financial hardship and who enters into a formal agreement with the
7 board to reimburse the board within that one year period for those
8 unpaid costs.

9 (f) All costs recovered under this section shall be deposited in the
10 Physical Therapy Fund as a reimbursement in either the fiscal year
11 in which the costs are actually recovered or the previous fiscal
12 year, as the board may direct.

13 9. Business and Professions Code sections 2261 and 2262 (Medical Practice
14 Act) of the Code states as follows:

15 **§ 2261. False documents**

16 Knowingly making or signing any certificate or other document
17 directly or indirectly related to the practice of medicine or podiatry
18 which falsely represents the existence or nonexistence of a state of
19 facts, constitutes unprofessional conduct.

20 **§2262. Alteration, modification, or creation of false medical
21 record with fraudulent intent; penalties**

22 Altering or modifying the medical record of any person, with
23 fraudulent intent, or creating any false medical record, with
24 fraudulent intent, constitutes unprofessional conduct.

25 In addition to any other disciplinary action, the Division of Medical
26 Quality or the California Board of Podiatric Medicine may impose
27 a civil penalty of five hundred dollars (\$500) for a violation of this
28 section.

9. Business and Professions Code section 2266 states: "The failure of a
physician and surgeon to maintain adequate and accurate records relating to the provision of
services to their patients constitutes unprofessional conduct."

11. Business and Professions Code section 2234 (Medical Practice Act)
provides that the board "shall take action against any licensee who is charged with
unprofessional conduct."

12. Business and Professions Code section 2239 (Medical Practice Act) states in relevant part the following:

§ 2239. Misuse of controlled substances, dangerous drugs or alcohol; unprofessional conduct

(a) The use . . . of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, . . . constitutes unprofessional conduct.

(b) A plea of verdict of guilty or a conviction following a plea of nolo contendere is deemed a conviction within the meaning of this section . . .

13. Business and Professions Code section 801 states in relevant part the following:

§ 810. False or fraudulent claims; disciplinary action

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with the intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

...

III.

GENERAL BACKGROUND

14. Meadow View Manor is a residential facility, located at 396 Dorsey Drive, Grass Valley, California. Grass Valley Care Center is a residential facility, located at 107 Catherine Lane, Grass Valley, California. Hallmark Rehabilitation contracts with Meadow View Manor and Grass Valley Care Center to provide rehabilitation treatment for their residents.

15. Respondent worked for Hallmark Rehabilitation providing physical therapy services to residents at both Meadow View Manor and Grass Valley Care Center until June 22, 2006. Respondent was also the Director of Rehabilitation at Meadow View Manor; her

1 duties included supervising the rehabilitation staff, developing the daily work schedule for the
2 staff, and evaluations and treatment of patients.

3 16. On Saturday June 10, 2006, at approximately 0022 hours, Respondent was
4 driving a 1996 Volvo, going the wrong way on SR-20/on McCourtney Road, and was pulled over
5 by a Nevada County Sheriff Deputy. Respondent was unable to perform the field sobriety tests,
6 and was arrested for driving under the influence of alcohol. At the Nevada County jail, two
7 breath tests were taken of Respondent (at 0156 and 0158 hours) and the results of these tests was
8 that her blood alcohol content was .20 and .19 percent. Respondent was booked into the Nevada
9 County jail.

10 17. Due to Respondent driving (June 10, 2006) while under the influence of
11 alcohol, on June 20, 2006, the Nevada County District Attorney's Office filed a misdemeanor
12 complaint against her entitled, *The People of The State of California*, Case No. M06-1151
13 alleging two counts: (1) violation of Vehicle Code section 23152(a) [driving under the influence
14 of an alcoholic beverage]; (2) Vehicle Code section 23152(b) [driving under the influence while
15 having a BAC of over .08 percent].

16 18. On August 2, 2006, in Case No. M06-1151, Respondent pled no contest to
17 a violation under Vehicle Code section 23152(a). Part of the criminal sentencing included the
18 following: (1) 1 day jail time & 2 days work release program; (2) 3 years probation; (3)
19 \$1,910.25 in fines; and (4) completing an alcohol treatment program.

20 19. On Saturday, June 10, 2006, Respondent was released from the Nevada
21 County jail at **11:09 a.m.** following her arrest and jail time for driving under the influence of
22 alcohol. Employees who worked at the Meadow View Manor did not see Respondent at
23 Meadow View Manor on June 10, 2006. Nevertheless, Respondent billed for providing physical
24 therapy on June 10, 2006, for five patients at Meadow view Manor: D.K., R.H., G.M., B.S., and
25 A.S.²

26 20. On the Hallmark Rehabilitation Time Signature Log, Respondent billed a
27

28 2. Patient names are abbreviated herein to protect patient confidentiality.

1 total of 4.25 hours on June 10, 2006. The 4.25 hours were listed as overtime. Respondent also
2 documented on the Daily PAL Input Form, used for billing purposes, that she treated patients
3 B.S. (60 minutes); R.H. (90 minutes); G.M. (60 minutes); A.S. (60 minutes);³ and D.K. (30
4 minutes), and that the total hours of treatment was 4.25.

5 21. Hallmark Rehabilitation terminated Respondent on June 22, 2006, due to
6 discrepancies in her billing for June 10, 2006.

7 22. On October 16, 2007, Respondent was arrested for driving under the
8 influence of alcohol. Due to the arrest, on November 19, 2007, a criminal misdemeanor
9 complaint was filed against Respondent in Placer County, in the case entitled, *The People of The*
10 *State of California v. Nicole Deloy Dupont*, Case No. 62-75173. The criminal complaint alleged
11 Respondent committed the following violations: (1) Vehicle Code section 23152(a) [driving
12 under the influence]; (2) Vehicle Code section 23152(b) [BAC over .08%]; and (3) Vehicle Code
13 section 23222(a) [open container while driving].

14 23. On February 25, 2008, Respondent pled nolo contendere [plea in
15 abstentia] to all the misdemeanor criminal charges in Case No. 62-75173, and Respondent was
16 placed on probation for four years, with various terms and conditions, including: (1) 60 days jail
17 time; (2) 18 month alcohol program; (3) abstain from alcohol; and (4) \$550 fine.

18 IV.

19 STATUTORY VIOLATION

20 FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

21 [Bus. & Prof. Code § 2660(d)]

22 24. Paragraphs 16 through 18, and 22 through 23 are incorporated herein by
23 reference. Respondent has subjected her license to discipline under Business and Professions
24 Code section 2660(d), for the following criminal convictions:

- 25 a. Criminal conviction on August 2, 2006, for violation of
26 Vehicle Code § 23152(a), in the case, *The People of The*

27
28 3. According to the information documented, Respondent wrote that she did 30 minutes of
therapeutic exercises with A.S., 15 minutes of gait, and 30 minutes of therapeutic activity.

1 *State of California*, Case No. M06-1151; and

2 b. Criminal conviction on February 25, 2008, for violation of Vehicle Code §
3 23152(a) and (b), and Vehicle Code § 23222(a), in the case, *The People of*
4 *The State of California*, Case No. 62-75173.

5 25. The conviction and the underlying conduct surrounding the
6 conviction are substantially related to the qualifications, functions, and/or duties
7 of a physical therapist as physical therapy deals with the “corrective rehabilitation
8 or of physical or corrective treatment of any bodily or mental condition of any
9 person.” (Section 2620.) Respondent’s conduct (driving while under the
10 influence of alcohol) is contrary to the physical health of herself and the public.

11 SECOND CAUSE FOR DISCIPLINE
12 (Fraudulent/Dishonest/Corrupt Acts)
13 [Bus. & Prof. Code § 2660(l)]

14 26. Paragraphs 14 through 21 are incorporated herein by reference.
15 Respondent has subjected her license to discipline under Business and Professions Code section
16 2660(l) for documenting that she provided physical therapy treatment on June 10, 2006, for five
17 patients (i.e., D.K., R.H., G.M., B.S., and A.S.), at Meadow View Manor. Said documentation
18 was fraudulent, dishonest, and corrupt, as Respondent did not work that day, was not seen by any
19 of the staff at Meadow View Manor that day, and was the same day she was released from jail at
20 11:09 a.m.

21 THIRD CAUSE FOR DISCIPLINE
22 (Excessive Use of Alcohol)
23 [Bus. & Prof. Code §§ 2239 and 2660(i)]

24 27. Paragraphs 16 through 18, and 22 through 23 are incorporated herein by
25 reference. Respondent is subject to discipline under Business and Professions Code section
26 2239(a) for unprofessional conduct in that Respondent has suffered two misdemeanor
27 convictions for violating Vehicle Code section 23152 [driving under the influence of alcohol].

28 Respondent is also subject to discipline under Business & Professions Code
29 section 2239(a) in that on June 10, 2006, and October 16, 2007, she misused alcohol in such a
30 manner of being dangerous or injurious to herself and others.

1 FOURTH CAUSE FOR DISCIPLINE
2 (Unprofessional Conduct/Violating The MPA)
3 [Bus. & Prof. Code §§ 2660(i), 2234, 2239, 2261, 2262]

4 28. Paragraphs 14 through 23 are incorporated herein by reference.

5 Respondent has subjected her license to discipline under Business & Professions Code section
6 2660(i) for violating the following provisions of the Medical Practice Act: § 2234
7 [unprofessional conduct], § 2261 [false document], § 2262, and § 2239 [misuse of alcohol].

8 More specifically, the conduct surrounding these violations include the following:

- 9 a. Bus. & Prof. Code § 2261, by knowingly making and signing the Hallmark
10 Rehabilitation Time Signature Log, and the Daily PAL Input Form, stating that
11 she treated five patients on June 10, 2006, for a total of 4.25 hours.
- 12 b. Bus. & Prof. Code § 2262, by altering the physical therapy records for patients
13 D.K., R.H., G.M., B.S., and A.S., by stating that she provided physical therapy
14 treatments to them on June 10, 2006.
- 15 c. Bus. & Prof. Code § 2239, by using alcoholic beverages on June 10, 2006 and
16 October 16, 2007, in a manner dangerous and/or injurious to herself and/or the
17 public, as alleged in paragraph 26.

18 FIFTH CAUSE FOR DISCIPLINE
19 (False/Fraudulent Claims)
20 [Bus. & Prof. Code § 810]

21 29. Paragraphs 14 through 21 are incorporated herein by reference.

22 Respondent is subject to discipline under Business & Professions Code section 810, in that, she
23 filled out the Daily PAL Input Form, a document used for billing insurance, indicating that she
24 spent 4.25 hours on June 10, 2006, providing physical therapy treatment to patients D.K., R.H.,
25 G.M., B.S., and A.S. The representation that she provided physical therapy treatment to five
26 patients (totaling 4.25 hours) on June 10, 2006, was false.

27 SIXTH CAUSE FOR DISCIPLINE
28 (Gross Negligence)
29 [Bus. & Prof. Code § 2660(h)]

30 30. Paragraphs 14 through 21 are incorporated herein by reference.

31 Respondent is subject to discipline due to extreme departures from the standard of care under
32 Business & Professions Code section 2660(h), in her care and treatment of patients D.K., R.H.,
33 G.M., B.S., and A.S. More specifically, Respondent's gross negligence includes the following:

- 1 a. In the Daily PAL Input Form concerning patient D.K.,
2 Respondent indicated that she performed 30 minutes of gait
3 training on June 10, 2006. In D.K.'s patient chart, there
4 was no documentation of any treatment for June 10, 2006.
5 Respondent committed gross negligence by billing for
6 treatment not performed.
- 7 b. In the Daily PAL Input Form concerning patient R.H.,
8 Respondent indicated that she performed 90 minutes of
9 treatment on June 10, 2006. Further, in R.H.'s chart,
10 Respondent prepared and signed a PT Evaluation Form and
11 a daily treatment note documenting physical therapy
12 treatment provided on June 10, 2006. Respondent
13 committed gross negligence by documenting treatment not
14 performed and billing for treatment not performed.
- 15 c. In the Daily PAL Input Form concerning patient G.M.,
16 Respondent indicated that she performed 60 minutes of
17 treatment on June 10, 2006 (15 minutes for therapeutic
18 exercise, 15 minutes for therapeutic activities, and 30
19 minutes for gait training). In G.M.'s patient chart, there
20 was no documentation of any treatment for June 10, 2006.
21 Respondent committed gross negligence by billing for
22 treatment not performed.
- 23 d. In the Daily PAL Input Form concerning patient B.S.,
24 Respondent indicated that she performed 60 minutes of
25 treatment on June 10, 2006 (30 minutes for therapeutic
26 exercise, 15 minutes for gait training, and 15 minutes for
27 therapeutic activities). In B.S.'s patient chart, there a daily
28 treatment note indicating 15 minutes of therapeutic activity
was performed, however, the gait training section of the
daily treatment note was crossed out, and the therapeutic
exercise section was left blank. Respondent committed
gross negligence by documenting treatment not performed
and billing for treatment not performed.
- e. In the Daily PAL Input Form concerning patient A.S.,
Respondent indicated that she performed 60 minutes of
treatment on June 10, 2006 (30 minutes for therapeutic
exercise, 15 minutes for gait training, and 30 minutes for
therapeutic activities). In A.S.'s patient chart, there a daily
treatment note indicating the following: 30 minutes of
therapeutic activity was performed, the therapeutic exercise
section was left blank, and the gait training section listed:
"Min. Assist with FWW" and did not indicate distance or
deviation. Respondent committed gross negligence by
documenting treatment not performed and billing for
treatment not performed.

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1 V.

2 **PRAYER**

3 WHEREFORE, Complainant requests that a hearing be held on the matters herein
4 alleged, and that following the hearing, the Board issue a decision:

5 1. Revoking or suspending Physical Therapist Number PT 16557, issued to
6 Nicole D. Dupont, PT;

7 2. Ordering Nicole D. Dupont, PT to pay the Board the reasonable costs of
8 the investigation and enforcement of this case, pursuant to Business and Professions Code
9 section 2661.5;

10 3. Taking such other and further action as deemed necessary and proper.

11
12 DATED: January 22, 2009

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14 Original Signed By:
15 Steven K. Hartzell
16 Executive Officer
Physical Therapy Board of California

17 State of California
18 Complainant

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